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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SARAH ADAMS, an Incapacitated Person, by her
Legal Guardian Yanixa Rosado, and YANIXA
ROSADO, Individually,

Plaintiff,

v.

JUAN J. PILARTE, MD, THE BRONX LEBANON
HOSPITAL CENTER, MONTEFIORE MEDICAL
CENTER, ORGANON USA INC, ORGANON
PHARMACEUTICALS, USA INC., ORGANON
INTERNATIONAL, INC., SCHERING-PLOUGH
CORPORATION AND MERCK & COMPANY,
INC.

Defendants.

Case No. 18 Civ. 2517

NOTICE OF REMOVAL

Supreme Court of the State of New
York, County of Bronx

Index No. 310425/2011

Defendant Montefiore Medical Center (the “Federal Defendant”), by its attorney, Geoffrey S. Berman, the United States Attorney for the Southern District of New York, hereby removes the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. The Federal Defendant is named as defendant in an action that was originally brought by Sarah Adams in the Supreme Court of the State of New York, County of Bronx (“the Bronx Supreme Court”), Index No. 310425/2011. A copy of the Complaint is attached hereto as Exhibit A.

2. Among other allegations, the Complaint alleges that the Federal Defendant negligently provided medical treatment to Sarah Adams commencing in or about March 2010 up through and including June 2010, relating to the prescription of the NuvaRing contraceptive method, that allegedly resulted in injuries to Sarah Adams.

3. Upon information and belief, Plaintiff Yanixa Rosado (“Plaintiff”) was appointed as legal guardian of Sarah Adams on or about July 30, 2012. On or about April 30, 2013, the Bronx Supreme Court permitted an amendment to the caption in this action to reflect the appointment of Plaintiff as legal guardian for Sarah Adams. Plaintiff thereafter styled this action as one brought by Plaintiff in her capacity as legal guardian for Sarah Adams and individually. Plaintiff, however, never amended the Complaint to assert any individual claims on behalf of Plaintiff.

4. Pursuant to the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1995, 42 U.S.C. § 201 *et seq.*, the Federal Defendant was deemed to be an employee of the United States Government, effective no later than January 1, 2010, for purposes of civil actions seeking damages for personal injury resulting from the performance of medical, surgical, dental, or related functions. *See* 42 U.S.C. § 233(a) and (g).

5. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b), 1402(b), 2401(b), and 2671–2680, provides the exclusive remedy with respect to Plaintiff’s claims against the Federal Defendant. *See* 42 U.S.C. § 233(a).

6. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against, *inter alia*, an employee of the United States Government who was acting within the scope of her employment. Attached as Exhibit B is the Certification of Geoffrey S.

Berman, United States Attorney for the Southern District of New York, certifying that the Federal Defendant was an employee of the United States and was acting within the scope of her employment for purposes of Plaintiff's claims.

7. On or about August 11, 2016, the Bronx Supreme Court granted a motion for summary judgment brought by Defendants Organon USA Inc., Organon Pharmaceuticals, USA Inc., Organon International, Inc., Schering-Plough Corporation, and Merck & Company, Inc. On that same day, the Bronx Supreme Court denied a motion for summary judgment brought by the Federal Defendant. A copy of the Bronx Supreme Court's Decision and Order on these summary judgment motions is attached as Exhibit C.

8. Venue is proper in this district under 28 U.S.C. § 2679(d)(2) because the state court where the action has been pending is located in this district.

9. The submission of this notice of removal is solely for the general purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendant. This Office makes a limited appearance on behalf of the Federal Defendant solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to any defendant, or the United States, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
March 21, 2018

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